

Wage and Hour Division, Labor

§ 531.37

PAYMENT WHERE ADDITIONS OR DEDUCTIONS ARE INVOLVED

§ 531.36 Nonovertime workweeks.

(a) When no overtime is worked by the employees, section 3(m) and this part apply only to the applicable minimum wage for all hours worked. To illustrate, where an employee works 40 hours a week at a cash wage rate of \$1.60 an hour in a situation when that rate is the applicable minimum wage and is paid \$64 in cash free and clear at the end of the workweek, and in addition is furnished facilities valued at \$4, no consideration need be given to the question of whether such facilities meet the requirements of section 3(m) and this part, since the employee has received in cash the applicable minimum wage of \$1.60 an hour for all hours worked. Similarly, where an employee is employed at a rate of \$1.80 an hour and during a particular workweek works 40 hours for which he is paid \$64 in cash, the employer having deducted \$8 from his wages for facilities furnished, whether such deduction meets the requirement of section 3(m) and subpart B of this part need not be considered, since the employee is still receiving, after the deduction has been made, a cash wage of \$1.60 an hour. Deductions for board, lodging, or other facilities may be made in nonovertime workweeks even if they reduce the cash wage below the minimum, provided the prices charged do not exceed the "reasonable cost" of such facilities. When such items are furnished the employee at a profit, the deductions from wages in weeks in which no overtime is worked are considered to be illegal only to the extent that the profit reduces the wage (which includes the "reasonable cost" of the facilities) below the required minimum. Accordingly, in a situation when \$1.60 an hour is the applicable minimum wage, if an employee employed at a rate of \$1.65 an hour works 40 hours in a workweek and is paid only \$54 in cash, \$12 having been deducted for facilities furnished to him, such facilities must be measured by the requirements of section 3(m) and this part to determine if the employee has received the minimum of \$64 (40 hours × \$1.60) in cash or in facilities which may be legitimately included in

"wages" payable under the Act. The same would be true where an employee is furnished the facilities in addition to a cash wage of \$54 for 40 hours of work. In either case, if the "reasonable cost" to the employer of legitimate facilities equals at least \$10 the requirements of the Act are met. Cf. *Southern Pacific Co. v. Joint Council Dining Car Employees*, 165 F. (2d) 26 (C.A. 9).

(b) Deductions for articles such as tools, miners' lamps, dynamite caps, and other items which do not constitute "board, lodging, or other facilities" may likewise be made in nonovertime workweeks if the employee nevertheless received the required minimum wage in cash free and clear; but to the extent that they reduce the wages of the employee in any such workweek below the minimum required by the Act, they are illegal.

§ 531.37 Overtime workweeks.

(a) Section 7 requires that the employee receive compensation for overtime hours at "a rate of not less than one and one-half times the regular rate at which he is employed." When overtime is worked by an employee who receives the whole or part of his wage in facilities and it becomes necessary to determine the portion of his wages represented by facilities, all such facilities must be measured by the requirements of section 3(m) and subpart B of this part. It is the Administrator's opinion that deductions may be made, however, on the same basis in an overtime workweek as in nonovertime workweeks (see § 531.36), if their purpose and effect are not to evade the overtime requirements of the Act or other law, providing the amount deducted does not exceed the amount which could be deducted if the employee had only worked the maximum number of straight-time hours during the workweek. For example, in a situation where \$1.60 an hour is the applicable minimum wage, if an employee is employed at a rate of \$1.65 an hour (5 cents in excess of the minimum wage) the maximum amount which may be deducted from his wages in a 40-hour workweek for items such as tools, dynamite caps, miners' lamps, or other articles which are not "facilities" within the meaning of the Act, is 40